



In the Matter of Lamonby
Quarries, Skelton, Eden
District, Cumbria

SECOND DECISION

This decision is supplemental to a decision dated 21 July 1981 and made by me upon a reference as to the ownership of land known as Lamonby Quarries, Skelton Eden District, being the land comprised in the Land Section of Register Unit No. CL341 in the Register of Common Land maintained by Cumbria County Council. In such decision I gave to Messrs Joseph Donald, Malcolm Donald and Isaac Donald of Lamonby House liberty to apply to me to adjourn the hearing such liberty to extend to any person through whom they claim or who claimed through them. Pursuant to an application dated 24 December 1981 and made on behalf of Mrs Mary Donald, Mr Joseph Donald, Mr William Donald and Mr Malcolm Donald, I held an adjourned hearing for the purpose of enquiring into the ownership of the land at Penrith on 12 March 1982. At this hearing the said Messrs Donald ("the Claimants") were represented by Mr D Mellor solicitor of Little & Shepherd Solicitors of Penrith, and Skelton Parish Council were represented as before by Mr W Wetherell their clerk.

Mr Joseph Donald who is 49 years of age and who farmed in partnership with the other Claimants (a partnership which included before his death in 1975 his father Mr William Donald) in the course of his oral evidence produced the documents specified in the Schedule hereto. The land ("the Unit Land") in this Register Unit was by the 1769 Award (on the plan therein mentioned marked "5E") with another parcel of ground awarded to be "set apart and for ever hereafter used as Places for getting Limestones and burning Lime upon by the Several Persons their Heirs Successors or Assigns who have Shares hereinafter set out unto them and are owners of Messuage Lands or Tenements within the Manor of Skelton for such uses and Purposes as they shall severally think Proper to be used within the said Manor of Skelton but not elsewhere". In the 1864 conveyance the Unit Land is on the plan marked as "Parish Quarry, Herbage belongs to this Estate", and is outside but adjoining the land edged red and thereby expressed to be conveyed. In the Schedule to the June 1926 Legal Charge (as also in the Schedule to the December 1926 Legal Charge) the Unit Land is mentioned as "216. (Right to Herbage only) 4a. 3r. 36p." and this acreage is excluded from the computed total of 144a. 0r. 1p. In the 1962 conveyance, the Unit Land is not included in the Schedule as being part of the 252.419 acres thereby expressly conveyed, but is by paragraph 2 of the conveyance expressly conveyed as close number 1072 on the OS map for all the vendor's "right title estate and interest (if any) in and to the herbage". In the 1970 conveyance the Unit Land is included in the Schedule described as "216. 1072. Right to herbage only. 5.164", and the acreage (5.164) is included in the total 257.333.

Mr Donald said (in effect):- His father moved to Lamonby about 36 years ago on becoming the tenant of Mrs Ludham from whom he in 1962 purchased the farms. During his earlier years, the Unit Land was let by the Parish Council for grazing (not to his father). In about 1965 the walls of the Unit Land were in a poor state and his father complained to the Parish Council. His deeds were then considered as showing that he had a herbage right and the Parish Council thereafter ceased to let the Unit Land and his father and the Claimants after him had from then



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onwards used the Unit Land as if it was part of their farm, there being convenient access through a gate in the south-east corner; as needed they restored odd bits of wall which came down. Nobody else had used the Unit Land save that there is for the benefit (of Hall) of Inglewood Edge a private right of way through the gate across the Unit Land to the Lane; this is used occasionally.

Mr Wetherell who has since 1944 been clerk of the Parish Council in the course of his oral evidence said (in effect):- According to the minutes the Unit Land was let by the Council on an annual tenancy (February to February) from 1894 to 1962. In 1962 they had complaints from the tenant about the state of the fences, and letters passed backwards and forwards between Messrs Donald and the Council. He thought that the tenant gave up his tenancy in about 1964, the land was advertised in January 1965 as being to let but there were no offers and no further action was taken. At a recent meeting of the Council he outlined the position and those present thought that the right of way should be preserved and that it would be to the advantage of all sides if they owned the land.

In answers to questions by Mr Mellor, Mr Wetherell agreed that the Parish Council never claimed any rent from anyone after 1965 and that it could be rightly said that from then onwards they "washed their hands of this piece of land", and conceded that at my hearing on 18 June 1981 they did not claim ownership.

It is not clear from the extract I have of the 1769 Award whether under it the Unit Land became Parish Property which by operation of law vested in the churchwardens and overseers and passed to the Parish Council, or whether the ownership remained as it was before 1769 or otherwise devolved. The letting by the Parish Council before 1964 suggests that they were then reputed owners. I infer from the oral evidence above summarised that about that time Mr Donald took possession adversely to the Parish Council and that since then he and the Claimants after him have been in possession, so that any ownership of the Parish Council has now been extinguished by the Limitation Act 1939. There was no evidence that anyone else could be the owner.

Accordingly I conclude that the Claimants under the 1970 Conveyance are now the owners, at least beneficially. However under section 22 of the 1965 Act I am concerned only with the legal estate in fee simple: as regards such estate subsection (2) of the section 34 of the Law of Property Act 1925 requires that a conveyance expressed to be made for the benefit of more than 4 persons, shall take effect as if it was made to the four persons first named. Such subsection expressly provide that it shall not effect beneficial interests, so I shall not prejudice Mr Malcolm Donald by excluding him from the legal estate if I give effect, as I think I must, to the subsection.

Accordingly upon the above consideration I am satisfied that Mrs M Donald, Mr J Donald and Mr F Donald as the survivors of the 4 persons in whom the legal estate was by the 1970 conveyance vested are the owners of the Unit Land and I shall accordingly direct the Cumbria County Council as registration authority to register Mrs Mary Donald of Keetholme Lamnby, Mr Joseph Donald of Croft House Lamnby and Mr William Donald of Lamnby House, Lamnby as the owners of the land under section 8(2) of the Act of 1965.



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I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

SCHEDULE
(Documents produced)

JD/1	—	Plan showing Lamonby Farm edged red.
JD/1A & B	3 March 1980	Letter from County Archivist (Carlisle) with a certified extract from the Skelton Inclosure Award 1769.
JD/2	11 November 1864	Conveyance with plan attached by which land described in the Schedule as containing 214a. 3r. 27p. was conveyed to John Hewer and William Hewer.
JD/3	24 June 1926	Legal Charge (received 30 December 1961) by Mrs O E H Ludham and Mrs M C Kitching in favour of Mr J Bland of messuages and lands known as Lamonby House (144a. Or. 9p.) and Woodgill (108a. 1r. 1p.) described in the Schedule by reference to OS. Nos.
JD/4	24 December 1926	Second Legal Charge (received 22 July 1930).
JD/5	2 February 1962	Conveyance on sale by Mrs O E H Ludham to Mr William Donald of two farms known as Lamonby House and Woodgill containing 252.419 acres.
JD/6	2 February 1970	Conveyance (voluntary) by Mr William Donald to Mr William Donald (himself), Mrs Mary Donald (his wife) and Mr Joseph Donald, Mr William Donald (junior) and Mr Malcolm Donald (his sons) of same premises.
—	25 May 1975	Certificate of death of William Donald (born 22 April 1905).

Dated this 2nd — day of August — 1982

a. a. Borden Fuller

Commons Commissioner